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MAILED

JUN 22 2009

OFFICE OF PETITIONS

In re Application of :
Lechot et al. :
Application No. 10/510,384 : **DECISION GRANTING PETITION**
Filed: October 5, 2004 : **UNDER 37 CFR 1.78(a)(3) and (a)(6)**
Attorney Docket No. PUS-P001-031 :

This is a decision on the petitions under 37 CFR 1.78(a)(3), filed May 1, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/IB03/01725, filed April 28, 2003, and under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional applications set forth in the concurrently filed amendment.

The petitions are **DISMISSED AS MOOT**.

A petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR §§ 1.78(a)(3) and 1.76(a)(6), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the prior-filed applications.

The instant pending nonprovisional application was filed on October 5, 2004, and was pending at the time of filing of the instant petition. While a reference to the prior-filed applications was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6).¹ In the instant case, the Office noted the

¹ Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

claim for priority of the prior-filed applications in the Declaration filed with the application, as shown by their inclusion on the original filing receipt.

In view of the above, the \$1410.00 petition fee is unnecessary and will not be charged to petitioner's deposit account.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3206.

This application is being returned to Technology Center Art Unit 2775 for examination in due course.

A handwritten signature in black ink, appearing to read "Liana Walsh". The signature is fluid and cursive, with the first name "Liana" being more prominent than the last name "Walsh".

Liana Walsh
Petitions Examiner
Office of Petitions